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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [REDACTED]
EAC 01 266 53237

Office: Vermont Service Center

Date: Nov 14 2002

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(B)(ii)

IN BEHALF OF PETITIONER: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed.

The petitioner is a native and citizen of Panama who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish eligibility for the benefit sought because she was divorced from her allegedly abusive spouse prior to the filing of the self-petition.

Upon review of the record of proceeding, the Associate Commissioner noted that the divorce between the petitioner and her spouse prior to the filing of the petition was no longer a bar if there was a connection between the legal termination of the petitioner's marriage within the past two years and battering or extreme cruelty by her spouse. However, the record reflects that the petitioner filed the self-petition more than two years after the divorce was final. The Associate Commissioner, therefore, concurred with the director's conclusion and dismissed the appeal on May 1, 2002.

On motion, the petitioner asserts that because of extreme cruelty by her spouse, she decided to divorce him and file a restraining order. She claims that due to lack of knowledge she was not aware that she must be legally married at the time she filed the petition. She further claims that she did not know that after being divorced she was able to file the self-petition.

As provided in 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceedings and be supported by affidavits or other documentary evidence. The petitioner has presented no new facts or other documentary evidence in support of the motion to reopen. The applicant was found ineligible for the benefit sought because she filed the self-petition more than two years after her divorce was final. No new facts, supported by affidavits or other documentary evidence, were furnished.

Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.